

Chapter 13

CABLE COMMUNICATIONS

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Article 13-1

TITLE

Sections:

13-1-. Title

This chapter shall be entitled the Town of Fountain Hills Cable Communications Chapter.

Section 13-1-. Title

Article 13-2

PURPOSE

Sections:

13-2-. Purpose

It is the purpose of this chapter to provide for the regulation and control of cable television systems operating within the Town of Fountain Hills, Arizona, by the council, in the public interest; to authorize the council to grant one or more non-exclusive licenses to operate cable communications systems; to provide for the use of town streets, public utility easements, public rights of way and public places by licensee and compensation to the town for use of same; and to require that the provision of this chapter be applicable to all licenses granted by the council. It is the further purpose and intent of this chapter to facilitate the provision of high quality cable television service to the citizens of the town while minimizing disruptions of the public domain for system installation and maintenance.

Section 13-2-. Purpose

Article 13-3

DEFINITIONS

Sections:

13-3-. Definitions

For purposes of this chapter, the following words, abbreviations, and their derivations shall have the meanings given herein. Words not defined are given the meaning in Section 602 of the Cable Act, 47 U.S.C. Subsection 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must" or "shall" are mandatory and the word "may" is permissive.

"Access channel" shall mean one or more channels dedicated in whole or in part for local non-commercial programming which is set aside for educational use or governmental use without a charge by the licensee for channel usage and which is not originated by a cable company; provided that such access programming shall not include:

1. the retransmission of local television broadcast signals, or
2. programming produced by persons unaffiliated with the cable company under the provisions of Section 612 of the Cable Act.

"Applicant" means any person that applies for a license.

"Application" means a proposal to construct and/or operate a cable system within the town, transfer a license, renew a license or modify a license. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

"Basic cable service" or "basic service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Section 521 et seq., as amended.

"Cablecasting" means a non-broadcast signal that originates within the facilities of the cable communications system.

"Cable service" means:

1. one way transmission to subscribers of:
 - a. video programming, or
 - b. other programming service, and
2. subscriber interaction, if any, which is required for the selection of such video programming or

other programming service.

"Cable television system" or "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the town. Such term does not include:

1. Facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses or crosses (above or through) any public right-of-way;
3. A facility of a common carrier that is subject, in whole or part, to the provision of Title II of the Communications Act of 1934, 47 U.S.C. Subsection 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers or
4. Any facility of any electric utility used solely for operating its electric utility systems. Furthermore, if there is a connection of any such exempt system to a licensed system such exemption shall cease.

"Change of service" means all requests by existing subscribers for modification to their cable service, such as additions or deletions of premiums services, additional outlets, remote controls FM service, etc. Such terms shall not include, initial installation of basic cable service, total disconnection of basic cable service or service calls.

"Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and is capable of delivering a television channel.

"Complaint" is a subscriber or citizen issue, presented in verbal or written form, to the licensee or the town relating to any aspect of the licensee's performance under this chapter.

"Control of licensee or applicant" means the legal or practical ability to direct the affairs of the licensee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest. In the case of a limited partnership, a change in limited partner interests shall not constitute a change in control where the limited partners have no power to participate in the management of the partnership, and the general partner retains full power.

"Converter" is an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television set.

"Council" means the Town Council of the Town of Fountain Hills, Arizona, or such representative person or entity as may be designated initially or at some future date to act on cable television matters.

"Density" means the number of potential subscriber households per mile of cable system. Dwelling units shall be counted when they are within 250 feet of any portion of the cable distribution system including trunk and feeder cable lines.

"Dwelling unit" means any separate and distinct structure or part thereof which exists in finished form, occupied or capable of year-round occupation, and serves as a residence to one or more persons.

Included in this definition, but not limited to are: all single family homes, each apartment unit, each condominium unit, patio homes, guest quarters and similar type structures.

"FCC" means the Federal Communications Commission or successor agency.

"Gross revenues" shall mean all cash, credits, property of any kind or nature, or other consideration, less related bad debts up to a maximum of one and one-half percent annually of such cash, credits and property, received directly or indirectly by a licensee, its affiliates, subsidiaries, parent and any person, firm or corporation in which a licensee has a financial interest or which has a financial interest in a licensee, arising from or attributable to the licensee's operation of its cable television system within the town, including, but not limited to:

1. Revenue from all charges for services provided to subscribers;
2. Revenue for all charges for the insertion of commercial advertising upon the cable system;
3. Revenue from all charges for the leased use of studios;
4. Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a subscriber to receive cable service;
5. Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional users.
6. Revenue from all charges for the use of or lease of leased access channels or band width.
7. Revenue from the production or transmission over the cable system of video programming by licensee including programming produced by its mobile facilities.
8. Any other income derived from the cable system.

Gross revenues shall not include taxes collected by licensee on behalf of any governmental authority; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary services provided to licensee's employees and is required by this chapter or any license; and dividends or other distributions made in respect of any stock or securities, or value received by a licensee or any of its affiliates, subsidiaries or parent relating to licensee services or through cooperative advertising. Gross revenues shall not include cash, credit, property of any kind or nature or other consideration received by a licensee's affiliates, subsidiaries, parent or any person, firm or corporation ("affiliate") in which a licensee has a financial interest or which has financial interest in a licensee for any sales of advertising on the cable system, services to provide programming on the cable system, production services and/or telecommunication services which are cable services when such services are provided by an affiliate, which has all the following characteristics: the affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records) and a separate mission; it makes payments to licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than licensee in the same industry as licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of license fees on gross revenues. Nothing contained in this exclusion from gross revenues shall be interpreted to exclude from gross revenues such cash, credit, property of any kind or nature or other consideration which would be considered the licensee's gross revenues derived from the operation of the cable system under the Cable Act. Except for gross revenue from such sales of advertising on the cable system, services to provide

programming on the cable system, production services or telecommunication services which are cable services received by such affiliate, this paragraph shall not exclude from gross revenues any source of gross revenues which an existing licensee itself is receiving at the time it is granted a license under this chapter, as revised April 6, 1995.

When a licensee (or an affiliate) holds one or more other cable television licenses in Maricopa County, Arizona and receives and allocates gross revenues from paragraphs 2, 6 and 7 under this definition, then gross revenues derived from paragraphs 2, 6 and 7 under this definition, shall be allocated pro rata to the town based on the ratio of the number of subscribers of licensee (or an affiliate), in the town to the number of subscribers of licensee (or an affiliate) in all the jurisdictions in Maricopa County, Arizona, in which licensee (or an affiliate) holds a cable license. If a licensee does not allocate its gross revenues derived from paragraphs 2, 6 and 7 under this definition from such other jurisdictions then the number of subscribers in such jurisdictions shall not be included in the total number of subscribers in all other jurisdictions.

"Interconnect" or "interconnect of facilities" is the connection of one or more channels of licensee's system with other cable systems by direct cable, microwave link, satellite or other appropriate methods.

"Leased channel" or "leased access channel" means any channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. Subsection 532, for commercial use by persons unaffiliated with the licensee.

"License" means the non-exclusive right and authority, granted by the council, as described in this chapter, to construct, maintain and operate a cable television system through use of the public streets or public places in the town. This term does not include any license or permit that may be required by the chapter or other laws, ordinances or regulations of the council for the privilege of transacting and carrying on a business within the town or for disturbing the surface of any street or public thoroughfare.

"Licensee" means the person granted a license agreement by the council and any lawful successor, transferee or assignee of said person.

"License agreement" means a contract entered into in accordance with the provisions of this chapter between the council and a licensee that sets forth the terms and conditions under which the license will be exercised.

"Malfunction" means an equipment or facility failure that results in the loss of a viewable signal on one or more channels. A "major malfunction" has occurred when five or more channels are affected.

"Outage" means an equipment or facility failure that results in a total loss of signal on all cable channels affecting three or more subscribers in a quarter section within any one hundred twenty minute period.

"Overbuild" means a cable system constructed to serve subscribers currently served by an existing cable system, including those parts of an existing system that will be constructed within six months pursuant to plans filed with the council.

"PEG access channel" or "PEG channel" means any channel set aside for educational use or governmental use without a charge by the licensee for channel usage.

"Person" means any individual, corporation, joint venture, association, syndicate, trust, partnership or any other business entity who holds or applies for a license from the council.

"Property of licensee" means all property owned, installed or used within the town by a licensee in the conduct of a cable television system business.

"School" means any public educational institution, which is accredited by a nationally recognized institution, including primary and secondary schools, colleges and universities.

"Service call" shall result when service problems occur relating to:

1. Fewer than three complaints regarding total loss of signal on all channels within the same quarter section within one hundred twenty minutes,
2. A degraded signal or picture on one or more channels, or
3. Property damage by licensee employees or authorized contractors.

"Standard drop" means that cable connection which requires no more than two hundred fifty foot drop measured from the nearest point of subscribers home or place of business to the nearest active tap on the cable system, involving only one outlet and standard materials and does not involve a wallfish. In addition, a standard drop shall exclude custom installation work including specific subscriber requested work that requires nonstandard inventory or cable routing that requires construction methods exceeding reasonable underground or aerial work.

"Street" means the surface, the air space above the surface and the area below the surface of any public street, road, highway, path, sidewalk, alley, court, easement or other public right-of-way or public place now or hereafter held by the town, County of Maricopa or State of Arizona for the purpose of public travel or public utilities.

"Subscriber" means any individual or entity legally receiving, for any purpose, cable services of the licensee's cable television system including, but not limited to, the basic service, redistribution of television broadcast signals, radio signals, licensee's original cablecasting, community programming, government and education access channels and other services such as leased channels, data and facsimile distribution, premium and pay per view channels and police, fire and similar public service communication.

"Town" means the Town of Fountain Hills, a municipal corporation of the State of Arizona, in its present boundaries, and its future boundaries as increased or decreased by law.

"Town manager" means the Town Manager of Fountain Hills, Arizona, or his designee, as will be communicated to the licensee in writing, if and when such designation occurs.

"Two-way capability" means the incorporation in a cable system of all appropriate design and engineering characteristics so that two-way transmission, including addressability, over the system can be implemented with a minimum of expense.

Section 13-3-. Definitions

Article 13-4

AUTHORITY TO GRANT LICENSE, LICENSE REQUIRED, NON-EXCLUSIVE LICENSE

Sections:

13-4-. Authority to Grant License, License Required, Non-Exclusive License

A. Pursuant to A.R.S. §9-505, as amended, the council has the authority to issue non-exclusive licenses to construct, install, maintain and operate cable communication systems within the town, and to regulate those cable operations. The council's authority is also based in common law pursuant to the town's ownership of the fee simple title to the streets of the town as well as its legal interest in easements and licenses granted to it by property owners for the purposes of municipal use.

B. No provision of this chapter shall be deemed or construed to require the granting of a license.

C. No person shall construct, install or maintain a cable system within any street in the town, or within any other public property of the town, unless a license agreement authorizing such use of said streets or property is in full force and effect.

D. Any person providing or maintaining a cable system in the town pursuant to a license granted by Maricopa County, Arizona, prior to the incorporation of the town, may continue to provide or maintain such system until such time as the town has granted its first license. If the person providing or maintaining a system does not receive one of the first town licenses, then the person shall have one hundred twenty days from the effective date of the first licenses to provide for the abandonment or removal of the system.

E. Any license issued by the council shall be non-exclusive, and the council specifically reserves the right to grant such additional licenses for cable systems as the council deems appropriate.

Section 13-4-. Authority to Grant License, License Required, Non-Exclusive License

Article 13-5

APPLICATION PROCEDURES

Sections:

13-5-. Application Procedures

A. Any person desiring to construct, install, maintain or operate a cable communication system within the town shall submit an application to the council. This application shall consist of executed application forms as prescribed and furnished by the town. Failure of any applicant to fully provide all information requested on the application forms will be sufficient cause for not considering the application. This application shall be filed with the town clerk.

B. All applications filed with the town clerk remain the property of the town. Applications for a license may be submitted only in response to a request for proposals (RFP) issued by the council in compliance with the provisions of this chapter. Applications submitted pursuant to a request for proposals may be returned as non-responsive if they do not comply with all requirements of the request. The council reserves the right to issue a request for proposals at any time.

C. Applications for consent to transfer a license or an interest in a license must conform to the requirements of Articles 13-9 and 13-12 of this chapter, while applications for renewal must conform to Articles 13-9 and 13-11.

D. An application for modification of a license agreement must conform to Article 13-9 of this chapter and include, at a minimum, the following information:

1. The specific modification requested;
2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved;
3. A statement as to whether the modification sought is pursuant to 47 U.S.C. Section 545, and, if so, a demonstration that the requested modification meets the legal standards of said section; and
4. Any other information necessary for the council to make a determination.

E. To be acceptable for filing, an application must be submitted with any required filing fee, be properly executed on the forms prescribed by the council, and contain the information required by any required application form, this chapter, and meet the requirements of any applicable request for proposals.

Section 13-5-. Application Procedures

Article 13-6

STANDARDS FOR GRANTING OR DENYING LICENSE APPLICATIONS

Sections:

13-6-. Standards for Granting or Denying License Applications

A. All applications received that are acceptable for filing shall be placed in a public file with the town clerk. The council shall publish notice of each application in a newspaper of general circulation within the proposed service area once a week for two consecutive weeks. The notice shall indicate the following:

1. The proposed service, or changes in service, and/or
2. Proposed changes in ownership; and
3. Where the application may be viewed; and
4. The due date for submission of any written comments; and
5. The date and location of a public hearing on the proposed application.

B. Notice of such hearing shall be published and held in accordance with the provision of A.R.S. §9-50, subsection B. All interested parties shall be afforded a reasonable opportunity to be heard.

C. The council shall give full consideration to each application. The following factors may be deemed appropriate and shall be considered:

1. The financial qualifications of the applicant and its ability to construct and operate the proposed system.
2. The need for and quality of the service proposed, including rates to subscribers, whether or not rates are to be regulated.
3. The technical, legal and character qualifications of the applicant, including applicant's willingness to abide by the limitations of this chapter.
4. Technical and performance adequacy of the proposed system design, plant and equipment, including any specific knowledge or experience the council may have with the applicant.
5. Where an applicant proposes to overbuild an existing cable system, the economic and technical feasibility of multiple cable systems, the impact on the existing licensee's system and the public interest, if the application were to be granted.
6. All other factors which may affect the public interest.

D. Thereafter, the council shall make a determination whether to approve or disapprove each application.

Section 13-6-. Standards for Granting or Denying License Applications

Article 13-7

LICENSE AGREEMENT

Sections:

13-7-. License Agreement

A. Upon the approval of an application by the council, the applicant shall negotiate and execute a license agreement within sixty days. If the council and the grantee fail to agree on the terms of a license agreement within the sixty days of the date that the council's action approving the application, the approval shall expire without further action by the council. This time limit may be extended by the council for good cause. The license agreement shall incorporate all terms and provisions of this chapter wherein a requirement is placed upon the licensee, either expressed or implied by this chapter. The licensee shall expressly and specifically agree to accept the terms of and be bound by the terms of this chapter.

B. A license agreement shall have the following characteristics:

1. It authorizes use of the public rights-of-way for installing cables, wires, lines and other facilities to operate a cable system, but does not expressly or implicitly authorize the licensee to provide service to, or install cable, wires, lines or any other equipment or facilities upon property without owner consent [except for compatible easements or rights-of-way pursuant to 47 U.S.C. Section 541(a)(2)], or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners. It also authorizes the licensee so to use, operate and provide similar facilities or properties rented, licensed or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the town; provided, however, that neither the licensee nor the third party shall be relieved of any regulation or obligations as to its use of such facilities in the streets.

2. It is subject to the paramount right of use of the public rights-of-way by the council and the public for public purposes. The council reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.

3. It is nonexclusive and will not expressly or implicitly preclude the issuance of other licenses to operate cable systems within the town.

4. It conveys no property right to the licensee or right to renewal other than as may be required by state or federal law.

5. It constitutes a contract between the licensee and the council once it is approved by the council and executed by both parties. A licensee contractually commits itself to comply with the terms, conditions and provisions of the license agreement and with all applicable laws, ordinances, codes, rules, regulations and orders.

6. The term of the license agreement shall not exceed fifteen years commencing on its effective date.

7. A licensee shall execute a hold harmless agreement as part of the license

agreement which shall set forth the obligation of the licensee over and above the insurance requirements contained in the license and this chapter.

8. A licensee shall be subject to all laws, rules and regulations of the State of Arizona and the United States Government.

9. Any of the provisions of this chapter may be amended by the council at any time. This chapter and such amended provisions shall be applicable to all existing license agreements; provided, however, that this chapter and such amended provisions shall not be applicable to an existing agreement where it would contravene a contractual right of the licensee under the license agreement, nor pose additional contractual burdens on the licensee.

10. All notices and communications from a licensee to the council pursuant to this chapter or a license agreement shall be sent to the town manager unless the licensee is otherwise directed.

11. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the license agreement shall grant the right and privilege to the licensee to provide non-cable communications services. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the council shall retain all authority to regulate non-cable telecommunication services to the extent necessary to protect the public interest and to ensure compliance with all provisions of this chapter.

Section 13-7-. License Agreement

Article 13-8

OPERATING REQUIREMENTS FOR CABLE COMMUNICATIONS SYSTEMS

Sections:

13-8-. Operating Requirements for Cable Communications System

A licensee shall conform to the following minimum standards relative to the construction, operation and maintenance of a cable communications system in the town. It is not the intent of this article to prevent any licensee from providing more than the required minimum to meet the standards listed below.

A. Rights of Individuals, Subscribers and Users.

1. A cable system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, channels, studios and other services to all residents and other entities having a legitimate use of the system. A licensee shall not discriminate in terms of rates, terms of service or extension of service on the basis of age, race, creed, sex, religion, national origin or marital status. Nor shall a licensee fail to extend service to any part of the town on the basis of the income of the residents.

2. A licensee shall maintain a business office open during normal business hours with listed local or toll-free telephone numbers to allow reasonable access by subscribers and members of the public. Unless a waiver is granted by the council, said office shall be located within ten miles of the town's corporate limits. When the office is closed, an answering machine or similar device, capable of receiving service complaints and inquiries must be employed.

3. Licensee shall maintain a written record listing date of all complaints, identifying the subscriber or citizen, describing the nature of the complaint and when and what action has been taken by the licensee, if any, in response thereto; such record shall be kept at licensee's office and shall be available for inspection during regular business hours without further notice of demand of the town manager. A summary of such records must be retained for not less than one year. The licensee shall notify each subscriber at the time of initial subscription to service of the procedure to reporting and resolving complaints.

4. A licensee shall establish procedures for the investigation and resolution of all complaints including, but not limited to, those regarding the quality of service and equipment malfunction. A copy of such procedures shall be provided to the council upon request.

5. A licensee must provide each subscriber at the time cable service is installed, the following:

a. written instructions for placing a service call, filing a complaint or requesting an adjustment, including the phone number and address of licensee's office;

b. the telephone number of the town office responsible for administration of the cable license;

c. a schedule of rates and charges for all available services;

d. copies of the service contract, including disconnect and reconnect procedures and charges;

e. a subscriber handbook and upon request any other written policies applicable to subscribers.

6. A licensee shall establish and conform to the following policy regarding refunds to subscribers and users:

a. If the licensee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the licensee shall provide such service or equipment within thirty days of the collection of the deposit or charge or it shall refund such deposit or charge within five days thereafter upon request of the subscriber. The subscriber must be advised of this right of refund at the time the order is placed.

b. If any subscriber or user terminates any monthly service during a period of time for which said subscriber or user has made an annual or other payment in advance, the appropriate pro rata portion of said payment shall be refunded by the licensee.

7. The following requirements shall apply to disconnections:

a. There shall be no charge for total disconnection of cable service unless such charge was disclosed at the time the subscriber ordered service. All cable communications equipment shall be removed within a reasonable time from a subscriber's property at the subscriber's request, such time not to exceed thirty days from the date of the request.

b. If any subscriber fails to pay a properly due monthly subscriber's fee or other charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effected until thirty days after the due date of the charges and shall include a prior written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper charges or fees, including the payment of any reconnection charge, the licensee shall promptly reinstate the service.

8. A licensee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to subscribers and the council of anticipated interruption. No prior notice shall be required for the performance of system maintenance work requiring a maximum of one hour between the hours of six a.m. and twelve midnight, and four hours between the hours of twelve midnight and six a.m.

9. A licensee shall at all times comply with the subscriber privacy provisions of 47 U.S.C. Section 551.

10. No equipment shall be installed by the licensee for subscriber service without first securing a service request from the owner or resident of any private property involved, except in public utility easements.

11. A licensee shall not originate or knowingly permit subliminal transmission at any time for

any purpose whatsoever.

12. A licensee shall provide leased access channels as required under 47 U.S.C. Section 532. In the event that said federal provisions should cease to apply, the council reserves the right to promulgate other leased access requirements which shall apply, not to exceed those requirements specified in 47 U.S.C. Section 532.

13. A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, 47 U.S.C. Section 554, state statutes and local regulations, and as the same may be amended from time to time.

B. Cable System Construction Timetable.

1. A cable system shall be constructed in accordance with the provision of the license agreement.

2. It is the policy of the council to require construction of a cable system designed to serve subscribers in an area licensed by the council as rapidly and expeditiously as possible. The licensee shall immediately upon granting of the license agreement diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies and others as necessary to comply with the provision of this chapter and other federal, state and town laws, codes and resolutions. However, no construction shall begin until the notification requirements set forth elsewhere in this chapter are satisfied.

3. A cable system shall be constructed pursuant to a construction timetable specified in the license agreement.

4. Any delay beyond the terms of the timetable specified in the license agreement will be considered a violation of the terms of this chapter and the license agreement. Unless the licensee can establish that the delay was due to factors beyond its control, the licensee may be considered in default of the license agreement and the town manager may take whatever action the town manager is entitled to under this chapter and the license agreement.

5. The licensee shall not be considered in default of the applicable construction schedule if the council approves a modification of the schedule change in advance. In submitting a request for a construction schedule modification, the licensee must fully explain the reasons for the delay, in writing. The delay must be disapproved by the council if it is not reasonably justified, would have unreasonably discriminating results, or would unduly delay service to an area. Such a modification request shall be considered granted unless the licensee is notified by the council to the contrary in writing within forty-five days of the date on which the request was filed.

6. The council may require a licensee to report on construction progress and provide information showing specifically whether the construction schedule is being met and the reasons for the delay. The town manager shall determine the format to be used for the report and the frequency of reporting.

7. Where appropriate and reasonable, a licensee shall schedule construction activities to coordinate with any town construction on streets so as to avoid unnecessary inconvenience to the public.

C. Line Extension Policy.

Unless the license agreement provides otherwise, a licensee shall be required to extend its cable system pursuant to the following requirements:

1. Upon reasonable request for service by any person located within any area of the town that meets density requirements of paragraph 2 of this subsection, the licensee shall, within sixty days, furnish the requested service to such person, unless prevented from providing said service due to factors outside licensee's control, such as permit restrictions, private easement considerations, etc. If such service has not been implemented within ninety days of said request, the council may impose liquidated damages for each day thereafter.

2. The licensee must extend and make cable television service available to every unserved dwelling unit within any area of the town reaching the minimum density of at least twenty-five dwelling units per mile of plant as measured from licensee's nearest activated trunk or feeder line, whether the existing plant is aerial or underground, except that the licensee shall not be required to install cable where another authorized licensee has already done so. Licensee shall complete line extensions to an area reaching a density of at least five homes within 1,056 feet of existing active cable plant, or where an area has more than five homes, at least one home per 211 street feet including the distance to existing active cable plant. Upon request, this density requirement may be modified by the council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable if licensee's compliance with said requirement would create a significant adverse impact on the capital costs of licensee's Fountain Hills cable system.

3. The licensee shall prevent unnecessary damage to streets and property by installing cables or conduits underground in new single family subdivisions at the same time and in the same trench as telephone, electric or similar services are installed. Given reasonable notice, the licensee shall install underground cable or conduit in all new subdivisions of five or more dwelling units within the service area at the same time and in the same trench as telephone, electric or similar services are installed. Cable need not be installed or activated until the new subdivision meets the criteria established for line extensions.

4. The licensee must extend and make cable television service available to any resident requesting connection within the licensee's authorized service area at the regular installation charge if the connection to the resident would require no more than a one hundred fifty foot drop line, and provided that paragraph 2 of this subsection is met.

5. With respect to requests for connection requiring a drop line in excess of one hundred fifty feet, the licensee must extend service to such residents at a one time charge not to exceed the actual costs incurred by the licensee for the distance exceeding one hundred fifty feet.

D. Construction and Technical Standards.

The following general requirements, which are not to be interpreted as imposing standards in excess of FCC imposed limits, apply to all licensees.

1. In those areas and portions of the service area where the transmission and distribution facilities of the telephone company and the electric company are underground or later placed underground, the licensee shall likewise install its transmission facilities underground.

2. In areas where facilities do not have to be underground, a licensee shall not erect

any new poles along any street or public way of the town except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems and only then with the advance approval of the council.

3. All television signals transmitted on a cable system must include any closed captioning information for the hearing impaired. Antennas, supporting structures and outside plant used in the system must be designed to comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plant.

4. The licensee must perform at its expense any proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the license agreement, and the FCC. The town manager may require periodic proof of performance tests to be performed at the expense of the licensee. Upon request, the licensee must provide the test results promptly to the town manager.

5. The licensee must advise the town manager when a proof of performance test is scheduled so that the town manager may have an observer present.

6. A licensee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another licensee, or individual or master antennas used for receiving television or other broadcast signals.

E. Maintenance Specifications

1. The licensee shall construct, install and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee's employees, the employees of the utility companies and all nearby property owners shall be a primary concern.

2. All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.

3. As between licensee and the town, the licensee shall be solely and completely responsible for the actions taken by any contractor or other agent employed to construct or install the licensee's facilities on streets as well as on public or private property.

4. The licensee shall give prior written notice, as set forth later in this article, of its intent to place underground facilities. Failure to provide such notice may subject a licensee to liquidated damages pursuant to Article 13-9 of this chapter or other enforcement sanctions.

5. In addition, the licensee shall comply with all other town, state and federal laws and regulations which may be applicable to its operations.

6. A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facility owned by the state, county, town or the gas, electric and telephone utilities, as well as pipeline companies or similar industries. The licensee shall respond to normal requests for location of its facilities within forty-eight hours. The licensee shall be a member of the One Call Notification Center, or comply with state underground law, for its service area.

7. In the event that licensee property, or the facilities and equipment of

unauthorized cable communication providers, has been installed in a street or other dedicated public right-of-way without complying with the requirements of this chapter, or the license has been terminated, revoked or expired, or the use of any licensee property is discontinued for any reason for a continuous period of three months, licensee or any unauthorized cable communication provider, shall at its sole expense on the demand of the council remove promptly from the street all licensee or unauthorized cable communication provider property other than that which the council may permit to be abandoned in place. Upon such removal of subject property, licensee or unauthorized cable communication provider shall promptly restore the street or other public places from which the subject property was removed to a condition as near as possible to its prior condition. Subject property no longer in service may be left in place with the approval of and in a manner prescribed by the council. Upon abandonment of said property in place, licensee or unauthorized cable communication provider shall deliver to the council an instrument transferring ownership of the subject abandoned property to the town. Any cost arising from compliance with this provision shall be borne by the licensee or unauthorized cable communication provider.

F. Use of Streets

1. A licensee must utilize, with the owner's permission, existing poles, conduits or such other facilities whenever possible. Underground street, sidewalk and driveway crossings not using existing conduits shall be bored unless specific council approval is received. A licensee may install its own poles only when approved by the council and subject to whatever reasonable terms the council requires.

2. All transmission lines and other equipment must be installed and located to minimize interference with the rights and reasonable convenience of public and private property owners. The council reserves the right to issue such reasonable rules and regulations concerning the installation and maintenance of cable systems in the public rights-of-way, as may be consistent with this chapter, state and federal law.

3. The licensee shall have at all times up-to-date route maps showing trunk and distribution lines. Licensee shall make all such maps available for review by the appropriate town personnel.

4. Suitable safety devices and practices as required by town, state and federal laws, ordinances, regulations and permits must be used during construction and maintenance of a cable system.

5. A licensee must remove, replace or modify at its own expense, any of its facilities within any public right-of-way when required to do so by the town manager to allow the town to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this article shall prevent licensee from seeking and obtaining reimbursement from sources other than the town.

6. On streets where electrical and telephone utility wiring are located underground, either at the time of initial construction or subsequently, the cable must also be located underground at the licensee's expense. Between a street or road and subscriber's residence, the cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone are aerial, licensee may install aerial cable except where a property owner requests underground installation and agrees to bear the additional cost over aerial installation.

7. A licensee must obtain any required permits before doing any excavation or causing disturbance to public thoroughfares or private property as a result of its construction or operations and must restore to their former condition such private property and public thoroughfares, the latter in a

manner consistent with all applicable rules, regulations, resolutions or other town manager requirements relative to construction, repair or maintenance in public rights-of-way. If such restoration is not satisfactorily performed within a reasonable time in the opinion of the town manager, the town manager may, after prior notice to licensee, cause the repairs to be made at the expense of the licensee. The town manager may inspect ongoing construction and require a licensee to halt construction where the town manager finds the construction to be in non-compliance with the requirements of this chapter, the license agreement or a permit.

8. Prior to commencement of underground construction a licensee must have complied with the following requirements:

- a. Have received a permit from the council for construction on public property or rights-of-way;
- b. Have requested and received clearance from utilities in the area of construction;
- c. Where new construction will be on private property or in public rights-of-way adjoining private property, have provided no less than seven days written notice by mail or hand delivered to all such property occupants. The notice shall include the name, address and toll-free phone number that the affected person may call for more information or to lodge a complaint.

9. At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than seventy-two hours advance notice. The direct expense of such temporary move must be paid by the permit holder, and the licensee may require payment in advance.

G. System Services and Capability

1. The following minimum requirements for facilities and services apply to licenses. The council may require that a licensee exceed these minimum requirements.

a. Except as provided in the license agreement, a cable system must have a minimum capacity of fifty-four video channels available for immediate or potential use. Two-way capability shall be designed into the system. Upon request, this minimum channel capacity may be modified by the council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable to comply with said requirement. A licensee shall have the burden of demonstrating, by clear and convincing evidence, that compliance with the minimum channel capacity would be commercially impracticable for its Fountain Hills cable system.

b. Standard installation and basic service to public buildings may be required without charge as set forth in the license agreement. Licensee may be required to make available, one service outlet to a conveniently accessible point in each school, police station, fire station and town hall or other facility or building located within the license area and used for public purposes as may be designated by the town manager. The installation charge to each occupant, if any, would not exceed licensee's direct cost (time and material). There may also be a minimum monthly service charge at the above locations.

c. A licensee must design its system to allow the council to interrupt audio portions of the cable service in an emergency to deliver information to subscribers.

d. A licensee must provide standby power for the headend so as to be able to operate some channels during a power outage for a minimum of six hours or as provided for in the license agreement.

2. The council may waive minimum requirements for licenses where the applicant demonstrates that such waiver is in the public interest.

3. The following requirements apply to access and community programming channels:

a. Applications for a license shall include proposals for the provision of educational and governmental access channel sufficient to meet community needs during the term of the license as determined by the council. A licensee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the licensee.

b. All access channel operations must conform to the following minimum requirements:

1) Access channels shall be carried on the licensee's lowest priced service offering.

2) The license may require a licensee or other entity to manage the access channels and to establish reasonable rules for the use of access channels consistent with the requirements of this chapter and the intended purpose of such channels.

3) The use of any educational access channel shall be made available free of charge to schools and other qualified educational institutions for the transmission of local educational programming.

4) The use of any local government access channels shall be made available free of charge to the council for the transmission of government related programming.

5) The licensee shall submit to the council on an annual basis a plan for publicizing access programs and access use.

c. At the request of a licensee the council may promulgate rules under which channel capacity dedicated to access use may be used by the licensee when it is not being used for access purposes.

d. A license shall include a provision for the licensee to provide channel capacity for community programming on terms and conditions specified in the license agreement.

H. Interconnection

1. A licensee shall interconnect its cable system with other or all other systems located in the town, in nearby cities, or in the county upon the request of the council, where economically and technically feasible.

2. Upon receiving the request of the council to interconnect, a licensee shall initiate negotiations with the other affected systems in order that technical details be resolved and costs may be shared on an equitable basis.

I. Local Broadcast Channels

Each cable system shall carry as part of the basic service local channels broadcast in its area as required and defined in current FCC regulations. In this regard, those parts of 47 C.F.R. Part 76 relating to carriage of local channel signals as existing, or as may be amended, shall apply and are incorporated herein by reference.

J. Technology Review

1. The town and licensee shall meet at periods not exceeding three years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors impacting cable television. As a result of these discussions, this license may be modified by the town and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.

2. If any of the following conditions occur, and upon written request of either licensee or town, the town manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:

a. Cable service similar to cable television service offered by licensee is provided by any entity using the streets and public ways, which is not subject to similar licensing requirements of the town.

b. The Cable Act is amended to allow licensee to provide intrastate or interstate telecommunication and any regional Bell operating company to provide cable service.

c. Any other significant event occurs, including but not limited to a final non-appealable order or judgement by a court of competent jurisdiction, which either licensee or town believes may impact the current terms and conditions of the license.

The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the council for proposed council action within ninety days of such written request, on how to amend the license to relieve town or the licensee from any commercial impracticability, which arises from the condition in question. This provision shall not require that the license be amended, however it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

Section 13-8-. Operating Requirements for Cable Communications System

Article 13-9

FEES, BONDS, LETTERS OF CREDIT, LIQUIDATED DAMAGES AND APPEALS

Sections:

13-9-. FEES, BONDS, LETTES, OF CREDIT, LIQUIDATED DAMAGES AND APPEALS

Section 13-9-. FEES, BONDS, LETTES, OF CREDIT, LIQUIDATED DAMAGES AND APPEALS

A. Application Fee

Each application for a license to be granted under the authority of this chapter shall be accompanied by a non-refundable filing fee in such amount as approved by the Council by resolution or as part of the Towns annual budget, by certified or cashier's check made payable to the town. Non refundable filing fees in the following amounts are required:

License Fee

1. In consideration of the fact the streets of the town will be used by a licensee in the operation of its cable system within the boundaries of the town and said streets are valuable properties acquired and maintained by the town at great expense to its taxpayers, and in consideration of the costs incurred by the town in regulating and administering each cable license, the licensee shall pay to the town up to five percent of the licensee's gross annual revenue, from all sources attributable to the operations of the licensee within the licensed area.
2. This payment shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be due and payable no later than thirty days after the relevant computation date. Each payment shall be accompanied by a financial report showing in detail the gross revenues of the licensee related to that quarter.
3. Except as provided in paragraph 8 of this subsection, the payment required pursuant to this article shall be in addition to any other tax or payment owed to the town pursuant to any other applicable ordinance or chapter of the town code, regulation or law of the County, State or federal government.
4. A license fee not received in full by the town within thirty days of its due date shall be deemed delinquent and subject to a late fee. The late fee for delinquent payment shall be five percent of the amount overdue plus interest at the rate of one and one-half percent per month, or parts thereof.
5. Where the licensee fee is based on gross revenues, the licensee shall file, with each license payment, a statement of the gross revenues for the period on which the fees are based. Such a licensee must file within three months of the end of its fiscal year a statement of gross revenues for the preceding year, which is either audited or certified as accurate by an officer of the licensee. Any payment of license fees to adjust for a shortfall in the quarterly payments for the preceding year must be made not later than the filing date for the audited annual statement of gross revenues. Adjustments for any overpayment will be credited to subsequent quarterly payments. Interest and late charges (as specified above) will not be

imposed for any payment necessary as a result of the yearly adjustment if the payment to correct the shortfall does not exceed ten percent of the total payments made during the preceding year. In the event such payment exceeds ten percent, the licensee is liable for interest and late charges for the entire amount due.

6. The town manager shall have the right, upon reasonable notice, to inspect or audit during normal business hours a licensee's records showing the gross revenues and other relevant underlying data and information. Upon examination of such information, the town manager has the right to recompute any and all amounts paid under a license. Any additional amounts due the town as a result of an audit shall be paid by the licensee within thirty days following written notice to the licensee by the council, which shall include a copy of the inspection or audit report. In the event that an inspection or audit results in additional monies owed the town in excess of five percent of the total paid, the licensee shall bear the total cost of the audit, and late charges and interest on the additional amount due.
7. No acceptance by the council of any payment shall be construed as an accord that the amount paid is in fact the correct amount nor shall such acceptance of payment be construed as a release of any claim the council may have.
8. There shall be allowed as an offset against the license fee due under this article any amounts licensee paid to the town during the prior quarter in privilege license (sales) taxes; provided, however, that there shall be no offset to the extent that licensee made payments of privilege license (sales) taxes on any gross income (within the meaning of the privilege license [sales] tax ordinance) which is not included in gross revenues under this chapter. The license shall provide for suitable procedures and methods for audit of this offset.

C. Performance Bond

1. Within thirty days after the execution of the license agreement and prior to any construction work in the public right-of-way, the licensee shall file with the town manager a performance bond, or a letter of credit in a form acceptable to the town attorney, in the town's favor in the amount of fifty thousand dollars, or as specified in the license agreement. In the event that licensee fails to comply with any provision of this chapter or the license agreement, then there shall be recoverable jointly and severally from the principal and surety any and all damages or costs suffered by the town. These damages or costs shall include but not be limited to attorney's fees, cost of any action or proceeding and including the full amount of any compensation indemnification, cost of removal or abandonment of any property or other costs due and owing the town up to the full amount of such bond.
2. At such time as ninety-five percent of planned construction in the town is complete, as specified in license agreement, the council may, at licensee's request, reduce or eliminate the performance bond requirement.
3. The bond shall be issued by a surety company authorized to do business in the State of Arizona and shall be in a form approved by the town attorney, and contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty days after receipt by the council, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

4. The rights reserved by the council with respect to the bonds required are in addition to all other rights and remedies the council may have under this chapter, the license agreement or any other law.

D. Irrevocable Letter of Credit

1. Within thirty days after written notification of the award of license by the council, the selected applicant shall provide the town manager a letter of credit from a financial institution licensed to do business in Arizona in the amount of ten thousand dollars, or as specified in the license agreement, as security for the faithful performance by licensee of all provisions of this chapter and compliance with all orders, permits and directions of any department of the town.
2. The form and content of such letter shall be approved by the town attorney and contain the following endorsement:

"This letter of credit may not be canceled or allowed to lapse until thirty days after receipt by the town manager, by certified mail, return receipt request, of a written notice from the issuer of the letter of credit of its intent to cancel or not to renew."

In the event the letter of credit is insufficient to pay the town for any compensation, damages, penalties, costs or expenses owed it pursuant to this chapter or the license agreement, the licensee's performance bond may be drawn upon by the town manager for any amount due the town over and above the amount of the letter of credit.

3. Within fifteen days after written notice to licensee by the town manager that the town manager has withdrawn any amount from the letter of credit, licensee shall deposit or pay to the town manager a sum of money sufficient to restore such letter of credit to the original amount of ten thousand dollars, or as specified in the agreement.
4. If a licensee fails to pay the town: any compensation within the time fixed by this chapter or the license agreement; any taxes due; or any damages, costs or expenses which the town incurs by reason of any act or default of the licensee; or if the licensee fails to comply with any provision of the license agreement which failure the town manager determines can be remedied or partially cured by demand on the letter of credit, the town manager may, following ten days notice to the licensee, withdraw from the letter of credit the amount so claimed by the town manager if within such period the licensee has not remedied the matter. The town manager shall immediately notify licensee of any such withdrawal, the date and amount.
5. The rights reserved to the town manager with respect to the letter of credit are in addition to all other rights it may have under this chapter, the license agreement and any other law.
6. Failure to maintain the letter of credit as required shall constitute a violation of the provisions of this chapter.

E. Liquidated Damages

All license agreements shall contain provisions for liquidated damages, in amounts as mutually agreed upon between the town manager and the licensee, for the licensee's failure to comply with various requirements of this chapter and the license agreement as specified below. All

references to notices throughout this subsection shall be by certified or registered mail, return receipt requested.

1. For failure to substantially complete construction or line extensions as required, unless the council specifically approves a delay caused by the occurrence of conditions beyond the licensee's control, the licensee shall pay five hundred dollars per day for each day, or part thereof, the deficiency continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
2. For material failure to provide data, documents, reports and information in a timely manner as required, the licensee shall pay one hundred dollars per day, or part thereof, that each violation occurs or continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
3. For material failure to test, analyze and report on the performance of the system following a request from the town manager to do so, the licensee shall pay one hundred dollars per day for each day, or part thereof, that such noncompliance continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
4. Failure to substantially comply with the material provisions of Article 13-8 of this chapter, the licensee shall pay one thousand dollars per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
5. For substantial failure to remedy any other violation of the chapter or the license agreement within seven days of receipt of notice of each violation, the licensee shall pay three hundred dollars per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
6. For failure to substantially comply with reasonable orders of the town manager, the licensee shall pay fifty dollars per day for each day, or part thereof, that noncompliance continues after licensee has been given notice of such deficiency and seven days within which to cure it pursuant to paragraph 8 of this subsection.
7. Liquidated damages will not be imposed by the town manager if the town manager finds that the failure of the licensee resulted from conditions beyond the licensee's control. Liquidated damages may be reduced or eliminated by the town manager if the town manager finds that the failure of the licensee resulted from excusable neglect. The licensee shall bear the burden of proof in establishing the existence of such conditions.
8. Prior to assessing any of the liquidated damages set forth in this article, the town manager shall give licensee seven days written notice of its intention to assess such damages. In said notice, the town manager shall set forth, at a minimum, the following:
 - a. amount to be assessed;
 - b. factual basis for such assessment; and
 - c. specific license provision alleged to have been violated.

Following receipt of notice set forth in this article, licensee shall have a seven day period during which time licensee and the town manager shall make reasonable efforts to resolve the dispute in question. Collection of liquidated damages by the town for any breach shall constitute the town's exclusive remedy for the period for which liquidated damages were collected.

9. The imposition and collection of liquidated damages as set forth above shall not prevent the town manager from pursuing other remedies for other violations of either the article or the license agreement for which liquidated damages have not been imposed and collected.

F. Appeals

1. In the event that licensee contests the town manager's assessment of liquidated damages, or fails to respond to the above mentioned notices, within fourteen days the town manager shall convene an administrative hearing as specified in subparagraph a of this paragraph. Licensee may pay the fine, proceed with this hearing, or waive its rights to this administrative hearing and proceed directly to the public hearing before the council, as specified in subparagraph b of this paragraph.
 - a. This shall be an administrative hearing, and licensee shall be afforded procedural due process, including an opportunity to be heard and to present evidence. Within fourteen days after the conclusion of such administrative hearing, the town manager shall issue a determination. In that determination the town manager may:
 - 1) find that licensee is not in violation of this chapter or the license agreement;
 - 2) find that licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;
 - 3) find that licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit or performance bond provided for elsewhere in this chapter;
 - 4) find that licensee is in material violation of this chapter and the license agreement and recommend the council declare the licensee in violation and terminate the license agreement, provided the council may take such action only after a public hearing as set forth in subparagraph b of this subsection.
 - b. If a public hearing before the council is requested by licensee or is held pursuant to item 4 of subparagraph a of this paragraph, it shall be de novo and it shall convene within thirty days of the request thereof. Licensee shall be afforded full due procedural process, including without limitation, an opportunity to be heard and to present evidence. The council's decision, which shall include findings of fact and conclusions shall be made not later than thirty days after the conclusion of the hearing. In that decision, The council may:
 - 1) find that licensee is not in violation of this chapter or the license agreement;
 - 2) find that licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;

- 3) find that licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit and/or performance bond provided for elsewhere in this chapter;
- 4) find that licensee is in material violation of this chapter and the license agreement and declare the licensee in violation and revoke the license agreement pursuant to Article 13-10.

(09-08, Amended, 07/02/2009)

Article 13-10

TERMINATION - REVOCATION

Sections:

13-10-. Termination - Revocation

A. Termination

The license shall terminate, upon the expiration of the term thereof, unless renewal is successfully applied for, per Article 13-11.

B. Revocation

1. If a licensee is in material violation of this chapter or in default of the terms of its license agreement, the town manager may make written demand that the licensee come into compliance with said requirements within a reasonable period of time, as specified in Article 13-9. If the licensee is unwilling or unable to do so, the town manager may recommend the revocation, alteration or suspension of the license to the council, specifying the reasons for such action.

2. A copy of any such recommendations shall be served by certified or registered mail, return receipt requested upon the licensee, and the licensee shall be given at least fourteen days notice prior to the date of a public hearing before the council to consider such action, and the licensee will be given an opportunity to present evidence and made argument at such meeting.

3. The council shall consider the recommendations, the response of the licensee, and hear from any other interested persons, and shall determine whether or not the licensee is in violation or default of its obligations and, if so, whether such failure was with just cause.

4. If the council finds that the failure by the licensee was with just cause, the council shall direct the licensee to comply within such time and manner and upon such terms and conditions as are reasonable.

5. If the council determines that the licensee's failure was without just cause, the council may declare the license revoked, altered or suspended. The council may provide a specified period of time for the licensee to come into compliance before the revocation takes effect.

6. A license may be revoked, altered or suspended by the council on the following grounds, among others, and taking into account any ameliorating circumstances:

- a. Fails to comply with any material provision of this chapter or the license agreement.
- b. Makes willful false or misleading statements in any application.
- c. Engages in the practice of any fraud or deceit upon the town or subscribers.

- d. Fails to abide by the privacy provision of this chapter.
- e. Fails to make timely payment of any monies due the town pursuant to this chapter.
- f. Unless otherwise provided in the license agreement, fails to commence construction in the license area within three months and to commence basic service within six months from the effective date of the license agreement.
- g. Fails to file and maintain the bonds, insurance, records, failure to pay license fees or assessed property taxes.
- h. For repeated material failure to maintain service quality under the standards prescribed.
- i. Fails to restore service after forty-eight consecutive hours after notice to the licensee or interrupted service to the entire system, except when such interruption is beyond the control of the licensee.

C. System Disposal

In the event of termination or revocation of a license, the licensee involved shall offer to sell the cable system, at the fair market value, to a new licensee or applicant for a license. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow and other factors will be considered. Under no circumstances shall any valuation be made for any right or privilege granted by license. Should the licensee fail to negotiate a sale, as described above, the town may purchase the system at the fair market value for the purpose of leasing to a qualified operator until a buyer can be found, pursuant to the provisions of A.R.S. §9-509.

D. Continuity of Service

Licensee shall provide continuous service for the entire term of the license agreement to all subscribers and users in return for payment of the established rates, fees and charges. If licensee seeks to sell or transfer, or if the town revokes or fails to renew the license, licensee shall continue to operate the system as trustee for its successor in interest until an orderly and lawful change of operation is effected. This period of operation shall not exceed one hundred twenty days from the occurrence of any of the above events. Revenues accrued during that period of time shall be received by the operator. During such time, the cable system shall be operated under terms and conditions consistent with the most recent license agreement and this chapter.

Section 13-10-. Termination - Revocation

Article 13-11

RENEWAL

Sections:

13-11-. Renewal

A. If a licensee decides to initiate a formal license renewal process in accordance with 47 U.S.C. Section 546, it must notify the council within thirty to thirty-six months prior to the license expiration date.

B. In considering a renewal application, the council must consider whether:

1. The licensee has substantially complied with the material terms of the existing license and applicable law;

2. The quality of licensee's service, including signal quality, customer service complaint resolutions, billing practices (without regard to mix, quality or level of cable services) has been reasonable in light of community needs;

3. The licensee has the financial, legal and technical ability to provide services, facilities and equipment set forth in its renewal proposal; and

4. The licensee renewal proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

C. If the council's assessment is that the license should not be renewed, the council may commence an administrative hearing in accordance with 47 U.S.C. Section 546.

D. The provisions of 47 U.S.C. Section (a) - (g) notwithstanding, a licensee may submit an application for renewal in accordance with Section (h), which affords a cable operator the opportunity to submit a proposal for the renewal of a license at any time. The council may, after adequate public notice and comment, grant or deny such proposal.

E. The renewal of a license does not become effective until any renewal fees have been paid by the licensee.

Section 13-11-. Renewal

Article 13-12

TRANSFERS AND CHANGE OF CONTROL

Sections:

13-12-. Transfers and Change of Control

A. Licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of more than forty-nine percent of the cumulative ownership of the system without prior written authorization from the council. For the purposes of this article, a merger or consolidation shall be deemed a transfer or assignment. The town manager shall be promptly notified in writing, within sixty days of the effective date of any such sale, transfer, assignment, exchange or release which constitutes more than five percent of the cumulative ownership of the system. Nothing in this article shall be deemed to prohibit a pledge or hypothecation or mortgage or similar instrument transferring conditional ownership of the systems assets to a lender or creditor in the ordinary course of business, unless such interest shall exceed seventy-five percent of the original cost or the fair market value, whichever is higher.

B. No Licensee shall sell, transfer, assign, exchange or release, or permit the sale transfer, assignment, exchange or release of more than ten percent of the cumulative ownership of the system, during the thirty-six month period commencing on final award to a licensee by the council, without expressed written consent of the council.

Section 13-12-. Transfers and Change of Control

Article 13-13

INDEMNITY-INSURANCE

Sections:

13-13-. Indemnity - Insurance

A. The licensee shall at its sole cost and expense, indemnify, hold harmless and defend the town, its officials, boards, commissions, agents and employees by providing immediate defense with counsel approved by the council, against any and all claims, suits, causes of action, proceedings and judgments for damages arising out of construction, maintenance or operation of the cable communication system.

B. The licensee, within thirty days after written notice of the granting of a license, shall provide the town with and maintain in full force throughout the term of the license agreement, insurance issued by a company duly authorized to do business in the State of Arizona, insuring with respect to the installation, construction, operation and maintenance of the system as follows:

1. Comprehensive general and automobile liability coverage including, but not limited to, blanket contractual liability, completed operations liability, broad form property damage including but not limited to coverage for explosion, collapse, underground hazard and automobile non-ownership liability. This insurance shall be written in the following minimum amounts.

a. Comprehensive general liability: \$1,000,000 combined single limit, bodily injury and property damage

b. Comprehensive automobile liability: \$1,000,000 combined single limit, bodily injury and property damage

c. Excess umbrella liability, covering all the above mentioned hazards, in the minimum amount of \$4,000,000.

2. Workers' compensation coverage as required by the laws and regulations of the State of Arizona.

3. All insurance policies required herein shall include the town of Fountain Hills as a named insured party.

4. Licensee shall be solely responsible for all premiums due and payable for insurance required herein. Licensee shall provide to the town a certified copy of the policies listed above.

5. All insurance policies required herein shall be in a form approved by the town attorney and shall include a sixty day notice of cancellation or modifying endorsement.

C. The provisions of subsection B of this article, in the discretion of the town, be satisfied by proof of self insurance.

Section 13-13-. Indemnity - Insurance

Article 13-14

ADMINISTRATION

Sections:

13-14-. Administration

A. Inspection of Records. The council reserves the right during the term of the license agreement and during normal business hours and upon the giving of reasonable notice to examine, audit, review and obtain copies of licensee's contracts, engineering plans, accounting, financial data and service records relating to the property and operations of the licensee and to all other records required to be kept pursuant to this chapter.

B. Licensee Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the licensee for the conduct of its business shall be provided to the town manager, upon request of the town manager.

C. Town Manager. The town manager or his designee shall have responsibility for the day-to-day administration of cable communication operations within the town as governed by this chapter and the applicable license agreements. The town manager shall be empowered to take all administrative actions on behalf of the council except those actions specified herein which are reserved to the council or another town office or officer.

Section 13-14-. Administration

Article 13-15

GENERAL PROVISIONS

Sections:

13-15-. General Provisions

A. Non-Discrimination. Licensee shall not deny service, access or otherwise discriminate against subscribers, users or residents of the town. Licensee shall comply at all times with all applicable federal, state and town laws, rules and regulations, executive and administrative orders relating to non-discrimination and equal employment opportunities and requirements.

B. Laws and Codes. Licensee shall comply fully with all applicable local, county, state and federal laws, codes, ordinances, rules and regulations.

C. Cumulative Rights and Remedies. Except as specified herein, all rights and remedies of the town manager and the council in this chapter are cumulative and may be exercised singly or cumulatively at the discretion of the town manager or the council.

Section 13-15-. General Provisions

Article 13-16

RIGHTS RESERVED TO THE COUNCIL

Sections:

13-16-. Rights Reserved to the Council

Without limitation upon the rights which the council may otherwise have and subject to paragraph 9, subsection B of Article 13-7, the council does hereby expressly reserve the right to amend any article or provision of this chapter for any reason determined to be desirable by the council including, but not limited to:

- A. New developments in the state of technology of cable communications systems.
- B. Any changes in federal or state laws, rules or regulations.

Section 13-16-. Rights Reserved to the Council